**S.B.Civil Misc. Appeal No190/92**
The Executive Engineer & anr. vs. Smt Lichma Devi

Date of Order: 03.7.2006

**HON'BLE MR. PRAKASH TATIA, J.**

Mr. O.P. Boob, Addl. Govt.Advocate, for the appellant.
Mr. S.N. Trivedi for the respondent.

Heard learned counsel for the parties.

A young person of the age of 41 years, who was working as Chowkidar in the employment of the appellant, died in the night of 21.12.1989 by drowning in the canal. It will be relevant to mention here that the appellants are the officers of the Indira Gandhi Canal Project and the Chowkidar was posted in the hut near the canal. According to the learned counsel for the appellant, the chowkidar was not to suppose to enter into the canal, therefore, his death was not caused while discharging any duty and, therefore, the Workmen Compensation Commissioner has committed error of law in awarding the compensation against the appellant. It is also submitted that the claimant did not serve any notice upon the appellant and, therefore, the claimant was not entitled to penalty, still the learned Workmen Compensation Commissioner 50% of the amount as penalty.

I considered the submissions of the learned counsel for the appellants and perused the record also.

This fact is not in dispute that the deceased was appointed as Chowkidar near the canal and, therefore, certainly he was supposed to watch the entire area. It is not the case of the appellant that he was never appointed to keep watch over the canal. The fact has not been made very clear by the employer about the actual duties of the said chowkidar, but when the chowkidar in the night was looking after the canal then it cannot be said that he was not allowed to watch near the canal area. In view of the above, the learned Workmen Compensation Commissioner has rightly held the death of the deceased during the course of employment and while discharging duties under the employment.

So far as non-service of the notice by the claimant to the respondent is concerned, as regards the payment of compensation is concerned, in the facts of this case, is not very much relevant because of the simple reason that the appellants themselves had full knowledge of the death of their Chowkidar and they themselves have lodged the F.I.R. and on such F.I.R., the police searched out the dead body of the deceased. Therefore, they had full knowledge and notice of the accident.

This Court is not inclined to interfere with the award of compensation as well as award of the penalty in such facts and circumstances. The total compensation including the penalty and

interest is only Rs.1,18,087/- .

In view of the above, the appeal is dismissed.

( **PRAKASH TATIA ),J.**

mlt.